

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCRA NO. E009 OF 2025

TIMOTHY MICHENI

KANAMPIUAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The Applicant Timothy Micheni Kanampiu filed the instant Notice of Motion dated 30th May 2025 seeking orders that:-

- (i) That the Application be certified urgent.
- (ii) That the Appellant be admitted to bond and/or bail pending the hearing and determination of the Appeal.

(iii) That in alternative the execution of the sentence meted out against the Appellant by the subordinate court be suspended pending the hearing and determination.

2. The Application is grounded on facts that the Applicant was tried, convicted and sentenced to 3 years' imprisonment; that he had preferred an appeal with weighty and arguable grounds; that there exist exceptional circumstances to warrant admission to bail pending appeal; that a substantial portion of the sentence may have been served by the time the appeal is determined; and; that the Appellant did not abscond when he was granted bond during the pendency of the trial.

3. The Application is supported by the sworn affidavit of Mark N. Muriithi Advocate for the Applicant dated 30th May, 2025. The averments in the Affidavit mirror the grounds already set out above with the exception of paragraph 9 which deposes that the Appellant suffers from a heart ailment.

4. The Application was opposed by the Respondents through Grounds of opposition dated 17th July 2025.

The Respondent stated as follows:-

(i) That the Application lacks merits.

(ii) That no exceptional or unusual circumstances have been cited by the Appellant to warrant granting of the prayers sought.

(iii) That no sufficient medical evidence has been produced to show that the

Applicant/Appellant's condition cannot be treated while in custody.

- (iv) That the appeal as filed does not raise substantial grounds of law or facts that demonstrate high chance of success.
- (v) That no weakness has been cited in the Prosecution's case that may favour this Appeal with overwhelming chances of success.
- (vi) That the Applicant has not shown that continued detention would occasion injustice or violate any constitutional rights.

5. The Application came up for hearing on 25th, July. In urging the Application, Mr. Muriithi learned Counsel

for the Applicant submitted that he relied on the grounds on the face of the Application and the Supporting Affidavit. He submitted that there were unusual circumstances being that the Applicant was ailing and his ailment could not be managed well in the prison as the Applicant required specialized treatment.

6. Counsel further submitted that the Applicant had filed an appeal and that the said appeal raised 11 grounds which were arguable and with a high chance of success. He urged the court to exercise discretion under Section 357 of the Criminal Procedure Code.

7. On her part, learned Prosecution Counsel submitted that they had authenticated the medical evidence provided by the Applicant in support of the Application and found those from Life Care hospital

to be authentic. That they could not obtain written confirmation without a court order due to client confidentiality. Counsel further stated that the prison authorities had confirmed that the Applicant had reported that he was ailing. Counsel submitted that in the light of her findings, she would leave the matter to the court.

Analysis and determination

8. The only issue for my consideration is whether or not the Applicant should be granted bail pending appeal.
9. From the onset, I must state that the Application was not opposed by the state, the learned Prosecution Counsel having abandoned their grounds of opposition at the hearing. Nonetheless it is the duty

of the court to consider the merits and demerits of the Application and exercise discretion judicially.

10. The applicable law is found in Article 49(1) h of the Constitution.

Article 49(1) h of the Constitution provides that:-

“An accused person has the right to be released on bond or bail on reasonable conditions pending charge or trial unless there are compelling reasons not to be released.

11. Section 356 of the Criminal Procedure Code provides that:-

356. “(1) The High Court, or the subordinate court which has convicted or sentenced a person, may grant bail or may stay execution on a sentence or order

pending the entering of an appeal, on such terms as to security for the payment of money or the performance or non-performance of any act or the suffering of any punishment ordered by or in the sentence or order as may seem reasonable to the High Court or the subordinate court.

(2) If the person in whose favour bail or a stay of execution is granted under this section is ultimately liable to a sentence of imprisonment, the time during which the person has been released on bail, or during which the execution was stayed, shall be excluded in computing the term of his sentence, unless the High Court, or failing that court the subordinate court which

convicted and sentenced the person, otherwise orders.”

12. Section 357 of the Criminal Procedure Code provides:-

357. “(1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:

Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.

(2) If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefore, the time during

which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.

(3) The Chief Justice may make rules of court to regulate the procedure in cases under this section.”

13. In **Jivraj Shah Vs. Republic [1986] KECA (KLR)**, the Court of Appeal held thus:-

“There is not a great deal of local authority on this matter and for our part such a we have seen and heard tends to support the view that the principal consideration is if there exist exceptional or unusual circumstances upon which this court can

fairly conclude that it is in the interest of justice to grant bail. If it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged, and that the sentence or a substantial part of it will have been served by the time the appeal is heard, conditions for granting bail will exist. The decision in Somo v Republic [1972] E.A 476 which was referred to by this court with approval in Criminal Application No. NAI 14 of 1986, Daniel Dominic Karanja v Republic where the main criteria was stated to be the existence of overwhelming chances of success does not differ from a set of circumstances which disclose substantial

merit in the appeal which could result in the appeal being allowed. The proper approach is the consideration of the particular circumstances and the weight and relevance of the points to be argued. It is almost self-defeating to attempt to define phrases or to establish formulae. There is a helpful passage in Archbold, Criminal Pleading Evidence and Practice, 41st Edition page 783, paragraph 7-86.”

14. Since the decision in the Shah case (*supra*), there has been growth in jurisprudence in the issue of bail pending appeal. In general, the conditions to be satisfied are whether the appeal has overwhelming chances of success, and; the presence of exceptional or unusual circumstances. It is also to

be remembered that the court retains discretion to grant or refuse bail.

15. In **Republic Vs. Paul Wainaina Boiyo & 6 Others [2014] KEHC 6018 KLR**, the court held:-

“An application for bail pending appeal is predicated firstly on the constitutional right to liberty; secondly, on a demonstration of exceptional circumstances and thirdly, it is an exercise of judicial discretion taking into consideration the circumstance of the case.....”

16. In this case, it was clear that the Applicant has already been convicted by a competent court and was serving a lawful sentence. He already lost the presumption of innocence and had therefore to

demonstrate that he had an arguable appeal with high chances of success.

17. From the listed grounds of appeal, and without touching on the merits or otherwise, it is not easy for this court to make a finding on the chances of the Applicant's success in the appeal. Suffice to state that the grounds are arguable.

18. With respect to unusual or exceptional circumstances, the Applicant has stated that he was ailing and provided detailed medical records to that effect. The authenticity of the medical records was confirmed by the State. Without going into the details of the ailment disclosed in the medical records, it is my view that the Applicant would benefit from closer and specialized medical attention.

19. In the end, I exercise discretion to grant the Applicant bail pending appeal on the following conditions:-

- (i) He shall pay cash bail of Kshs.50,000/- and in addition provide one surety of similar amount.
- (ii) He shall attend court whenever required.
- (iii) He shall file his Record of Appeal within 30 days and comply with all directions to expedite the Appeal. Failure to do so shall lead to an automatic lapse of the bail/bond

Orders accordingly.

**Ruling delivered, dated and signed at Chuka
this 15th day of October, 2025.**

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Appellants, Mr. Muriithi for the Applicant and Ms Rukunga for the Respondent. Muriuki (Court Assistant.)

ORIGINAL